

AN ORDINANCE

2008-06-12-0528

AUTHORIZING THE CITY TO LEASE FROM RIVERVIEW TOWER PARTNERS, LTD. APPROXIMATELY 20,852 SQUARE FEET AT 111 SOLEDAD STREET, COUNCIL DISTRICT 1, FOR OFFICE SPACE FOR THE PURCHASING DEPARTMENT, THE INTERGOVERNMENTAL RELATIONS DEPARTMENT, AND THE OFFICE OF CUSTOMER SERVICE, THE LEASE TO BE FOR FIVE YEARS WITH POSSIBILITY OF RENEWAL, RENT INITIALLY TO BE \$27,802.66 MONTHLY PLUS A SHARE OF OPERATING EXPENSES.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a lease agreement substantially in the form of **Attachment I**, which is incorporated by reference for all purposes as if fully set forth. The City Manager and designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

SECTION 2. Funding for this ordinance is contingent upon approval of the FY 2009 Budget for the sources listed below:

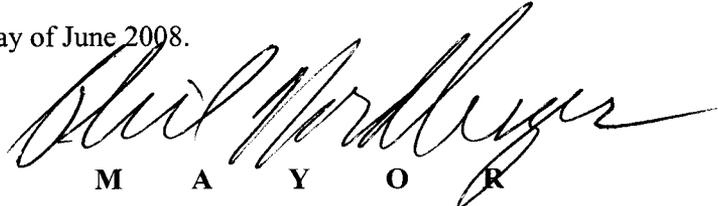
	Cost Center	3201010001	Office of the Director
Purchasing	General Ledger	5206010	Rental of Facilities
	Fund	71001000	Intergovernmental Service Fund
	Cost Center	801010001	Intergovernmental Relations
Intergovernmental Relations	General Ledger	5206010	Rental of Facilities
	Fund	11001000	General Fund
	Cost Center	2101010001	Director's Office
Customer Service/311	General Ledger	5206010	Rental of Facilities
	Fund	11001000	General Fund

SECTION 3. If approved by council, payment not to exceed the budgeted amount is authorized to and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance becomes effective 10 days after passage.

PASSED AND APPROVED this 12th day of June 2008.



M A Y O R

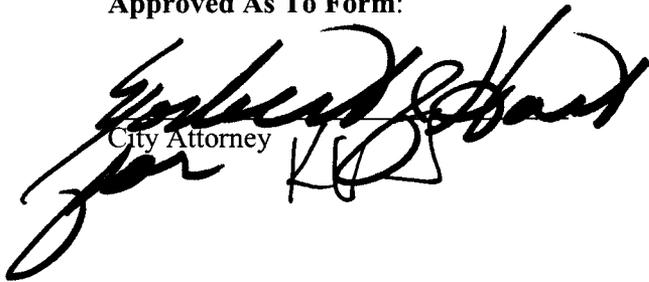
PHIL HARDBERGER

Attest:



City Clerk

Approved As To Form:



City Attorney

Attachment I

**Office Lease
(Riverview Tower/Purchasing-IGR-311)**

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: Riverview Tower Partners, Ltd.

Landlord’s Address: 111 Soledad, San Antonio, Texas 78205

Tenant: City of San Antonio

Tenant’s Address: P.O. Box 839966, San Antonio, Texas 78283-3966



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 22

Name:	8, 9, 12, 14, 15, 18, 20, 22, 23, 24, 26, 27, 28A, 28B, 29A, 29B, 30, 31, 32, 33, 37, 38, 39A, 39B, 39C
Date:	06/12/2008
Time:	10:17:35 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the City to lease from Riverview Tower Partners, Ltd. approximately 20,852 square feet at 111 Soledad Street, Council District 1, for office space for the Purchasing Department, the Intergovernmental Relations Department, and the Office of Customer Service, the lease to be for five years with possibility of renewal, rent initially to be \$27,802.66 monthly plus a share of operating expenses. [Penny Postoak Ferguson, Assistant City Manager; Mike Frisbie, Director, Capital Improvements Management Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

Premises: Approximately 20,852 rentable square feet consisting of Suites 1100 and 1600, in a structure commonly known as Riverview Tower ("Building"), at 111 Soledad, San Antonio, Texas, such Premises being further described in **Exhibit A**.

Permitted Use: General office use.

No. of Parking Spaces: 13 parking spaces in the Rand Parking Garage

Commencement Date: No sooner than the issuance of a certificate of occupancy to the Premises after finish-out, the actual date to be stated in a Lease Commencement Memorandum substantially in the form of **Exhibit B**.

Initial Term: 60 months.

Address for Payment of Rent: 111 Soledad, San Antonio, Texas 78205

Security Deposit: None

Asbestos Survey Deadline: 10 days before lease commencement.

Building Operating Hours: 8:00 A.M. to 6:00 P.M. Monday through Friday, and until noon on Saturdays, except holidays

Common Areas: All facilities and areas of the Building [include if applicable: and Parking Facilities] and the related land that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all tenants of the Building. Landlord has the exclusive control over and right to manage the Common Areas.

Essential Services: (a) HVAC; (b) plumbing and hot and cold water; (c) sewer; (d) gas; (e) janitorial service, periodic window washing, and trash removal; (f) elevator service; (g) electricity; (g) lighting in Common Areas and fluorescent lights in the Building's standard light fixtures in the Premises; (h) security systems; (i) life safety systems; and (j) pest control, and (k) the cleaning and maintenance services prescribed in **Exhibit D**.

Operating Expenses:

All expenses that Landlord must reasonably pay in connection with the ownership, operation, and maintenance of the building, including real estate taxes but excluding costs for (i) principal or interest on debt, (ii) capital expenditures classified as such for federal income tax purposes; (iii) repair, replacements, and general maintenance paid by proceeds of insurance or by Tenant or other third parties; (iv) depreciation; (v) leasing commissions; (vi) legal expenses; (vii) renovating or otherwise improving space in the Building; (viii) federal income taxes imposed on or measured by the income of Landlord from the operation of the Building; and (ix) marketing expenses.

The exhibits to this Lease are:

- Exhibit A: Description of Premises/Floorplan
- Exhibit B: Lease Commencement Memorandum
- Exhibit C: Work Letter
- Exhibit D: Cleaning and Maintenance Schedule

All exhibits are incorporated by reference for all purposes as if fully set forth.

2. Grant.

Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2A. Parking.

Included in the Lease are the number of reserved parking spaces indicated above.

3. Rent.

3.01. Base Rent for the Initial Term is as follows:

- Year 1 \$27,802.66 monthly, plus Tenant's Pro-Rata Share (as later defined) of the preceding year's Operating Expenses that exceeded the Expense Stop, if Landlord timely submits the information required by this Lease, but only for the last 11 months of the year. No rent is due for the first month of the lease.

- Years 2-3 \$27,802.66 monthly (\$16.00 a rentable square foot annually), plus Tenant's Pro-Rata Share (as later defined) of the preceding year's Operating Expenses that exceeded the Expense Stop, if Landlord timely submits the information required by this Lease.

- Year 4-5 \$29,540.33 monthly (\$17.00 a rentable square foot annually), plus Tenant's Pro-Rata Share (as later

defined) of the preceding year's Operating Expenses that exceeded the Expense Stop, if Landlord timely submits the information required by this Lease.

3.02. In addition to the Base Rent, Tenant must pay to Landlord \$77 per space, subject to change, monthly as Parking Rent. If Tenant needs spaces additional to those noted above, Landlord will try to make them available, subject to other demand, on a month-to-month basis.

3.03. Tenant must pay Base Rent and Parking Rent in the amounts described in this section monthly in advance on the first day of each month. All Base Rent installments for any given year will be equal, and Parking Rent installments will vary only as the number of spaces varies.

3.04. "Expense Stop" means the actual Operating Expense realized by Landlord for calendar year 2008.

3.05. Not later than March 31, 2010, Landlord must submit to Tenant, as well as each later March 31, during the term of the Lease, a detailed written calculation of all Operating Expenses exceeding the Expense Stop, together with supporting documentation of Landlord's claim. Tenant may audit Landlord's claim of excess Operating Expense, at Tenant's sole cost and expense. In the course of the audit, Tenant may inspect Landlord's ledger accounts and other documentation at Landlord's management office in the Building or at a mutually agreed upon location.

3.06. "Tenant's Pro Rata Share" is derived by first computing a fraction consisting of the rentable square feet of the Premises divided by the total rentable square feet of the Building. The dividend is then multiplied by the amount by which the previous year's Operating Expenses exceeded the Expense Stop. The product is Tenant's Pro Rata Share. Operating expense increases other than for taxes, insurance, and utilities are limited to five percent above the previous year's level. Increases greater than five percent do not accumulate to subsequent years.

3.07. Landlord will provide Tenant heating, ventilation and air conditioning ("HVAC") service to heat and cool the Leased Premises during Building Operating Hours. If Tenant requests, Landlord must provide HVAC at other times. Tenant must pay Landlord \$35 an hour, with a minimum of two hours usage, for such use. HVAC charges for use outside standard hours are not included in the calculation of excess Operating Expenses. Tenant must pay the charges separately to Landlord, as billed on a monthly basis.

3.08. If Landlord receives prepaid rent from or for the account of Tenant, Landlord must apply the prepaid rent according to Tenant's directions.

3.09. Whenever this lease calls for calculations based on the rentable square feet of the Premises, the figure to use is stated in the Lease Commencement Memorandum.

If Tenant exercises its expansion option, the parties must include in the documentation of that exercise a statement of the new total rentable square feet.

4. Tenant's Expansion Rights.

4.01. In addition to the Premises identified at the beginning of this lease, Tenant may take down Suite 100 as expansion space anytime during the first two years of the Lease. Suite 100 consists of approximately 2,299 rentable square feet.

4.02. Suite 1120, which consists of approximately 3,029 rentable square feet, is presently subject to a lease that expires August 31, 2010, and that lease offers the tenant no renewal rights. Tenant may take down Suite 1120 as expansion space at the time the existing lease expires.

4.03. If the lease on Suite 1120 terminates sooner than its scheduled expiration for any reason, Tenant has 30 days to deliver to Landlord written notice of its election to take down the expansion space. The 30 days runs from Tenant's receipt of Landlord's written notice of early termination. While Tenant's option is outstanding, Landlord must not lease Suite 1120 to anyone.

4.04. Tenant waives either option by delivering written notice of the waiver to Landlord. Tenant exercises either option by delivering written notice of the exercise to Landlord. Landlord must not lease either expansion suite to another while Tenant's option is outstanding.

4.05. The designated space becomes part of the Premises at the time specified in a future Lease Commencement Memorandum. Rent for expansion space taken down under this article is at the same rate as the original Premises, and the terms of this Lease likewise apply.

4.06. Landlord must provide Tenant with a tenant improvement and architectural and engineering allowance for Suite 100, calculated by multiplying \$17 times the number of square feet in the expansion space taken down and multiplying the product times a fraction, the numerator of which is the number of months remaining in the original five-year term and the denominator of which is 60. The second product is the tenant improvement and architectural and engineering allowance for the expansion space. The term for the expansion space expires at the same time as for the original Premises.

4.07. Landlord must provide Tenant with a tenant improvement and architectural and engineering allowance for Suite 1120, calculated by multiplying \$13 times the number of square feet in the expansion space taken down and multiplying the product times a fraction, the numerator of which is the number of months remaining in the original five-year term and the denominator of which is 60. The second product is the tenant improvement and architectural and engineering allowance for the expansion space. The term for the expansion space expires at the same time as for the original Premises.

4.08. Council's authorization of this instrument authorizes the Capital Improvements Management Services Department Director to choose to lease additional space under any provision of this paragraph or to choose to waive expansion rights, without further council action.

5. Term, Renewal.

5.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease.

5.02. Tenant may renew this Lease for two 5-year terms by giving Landlord six months prior written notice before expiration of the previous term, whether initial or renewal. Renewals are on the same terms and conditions as the Initial Term, except for rent. Rent during the first renewal is at \$17 a rentable square foot for years one through three and \$18 a rentable square foot for years four and five. Rent during the second renewal is at the then market rate for comparable premises.

6. Tenant's Affirmative Promises.

Tenant promises that it will:

6.01. Subject to the finish out provided for in this Lease, accept the Premises in their present condition.

6.02. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Building and Common Areas adopted by Landlord.

6.03. Obtain and pay for all utility services used by Tenant and not provided by Landlord.

6.04. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

6.05. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.

6.06. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

6.07. Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

6.08. Not less than 15 days after Landlord's request, execute an estoppel certificate that states the Commencement Date and Expiration Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate that purports to modify

Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

7. Tenant's Negative Promises.

Tenant promises that it will not:

7.01. Use the Premises for any purpose other than the Permitted Use.

7.02. Create a nuisance.

7.03. Interfere with any other tenant's normal business operations or Landlord's management of the Building.

7.04. Permit waste.

7.05. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.

7.06. Change Landlord's lock system, without Landlord's written consent.

7.07. Alter the Premises.

7.08. Allow a lien to be placed on the Premises.

7.09. Assign this lease or sublease any portion of the Premises without Landlord's written consent, which must not be unreasonably withheld.

8. Landlord's Affirmative Promises.

Landlord promises that it will:

8.01. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Expiration Date.

8.02. Obey all applicable laws with respect to Landlord's operation of the Building and Common Areas.

8.03. Provide and pay for the Essential Services.

8.04. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, corridors, and windows, (e) HVAC, wiring, and plumbing, (f) floors, and (g) other structures or equipment serving the Premises.

8.05. Return the Security Deposit to Tenant, less itemized deductions, if any, within sixty days after the last day of the Term.

8.06. Deliver to Tenant an Asbestos Survey of the Premises and the Building not later than Asbestos Survey Deadline, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas.

8.07. Pay \$304,630 for construction management fees, architectural and engineering fees, and the cost of finish-out for both Suites 1100 and 1600. Tenant decides how to allocate that amount between the two suites. Landlord must contract for and assure timely completion of the finish-out as set out in the Work Letter and the exhibits to it attached as **Exhibit C**, which is incorporated into this Lease for all purposes as if fully set forth. Landlord's construction management fee of 3% is part of the \$304,630. This construction management fee to the Landlord is the only allowable management, oversight, or review fee to be taken out of any part of the finish-out allowance.

8.08. After casualty loss not terminating the lease, rebuild the interior partitions, ceilings, wiring, light fixtures, and plumbing.

9. Landlord's Negative Promises.

Landlord promises that it will not:

9.01. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

9.02. Unreasonably withhold consent to a proposed assignment or sublease.

10. Alterations.

Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

11. Insurance.

11.01. Tenant will self-insure as it deems advisable against loss of any of its property in the Premises.

11.02. Landlord must maintain Commercial General Liability insurance of not less than \$1,000,000 and property and casualty insurance for physical damage to the Premises in the amount of 80% of their actual cash value.

12. Indemnification.

12.01. Landlord must indemnify Tenant and its agents, officials, and employees and hold them harmless of and from any and all loss, cost, liability, or expense arising from or related to either Landlord's or Tenant's activities on or regarding the Premises or the building. Landlord's indemnity of Tenant includes the acts or omissions of those whose presence is through Landlord.

12.02. Nothing in this lease waives any governmental immunity available to Tenant under Texas Law, and nothing in this lease waives any defenses of the parties to claims by third parties under applicable law.

12.03. This indemnification is solely for the benefit of the parties hereto and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

12.04. Landlord must promptly deliver written notice to Tenant of any claim or demand subject to this indemnity. Landlord must investigate and defend such claim or demand at its sole cost. Notwithstanding any condition imposed by an insurance policy in which Landlord and Tenant are named, Tenant retains the right, at its option and at its own expense, to participate in any such defense provided by any insurance or self-insurance of Landlord without relieving Landlord of any of its indemnity.

12.05. This indemnity expressly covers the consequences of Tenant's own negligence.

13. Casualty/Total or Partial Destruction.

13.01. If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises that are not within Tenant's Rebuilding Obligations to substantially the same condition that existed before the casualty and Tenant will, at its expense, replace any of its damaged furniture, fixtures, and personal property and restore any leasehold improvements that are within Tenant's Rebuilding Obligations. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

13.02. If the Premises cannot be restored within ninety days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue and Landlord will restore the Premises as provided in a. above.

13.03. To the extent the Premises are untenantable after the casualty, the Rent will be adjusted as may be fair and reasonable.

14. Condemnation/Substantial or Partial Taking.

14.01. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

14.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

14.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

15. Holdover.

15.01. If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, after the Initial Term and after any renewals provided for in this instrument, Tenant may hold-over for up to six additional months on a month-to-month basis. Tenant need not give advance notice of intent to exercise this hold-over right. The rent during a holdover is the same as the rent for the term being held-over, and all other terms of this Lease apply. If Tenant holds over more than six months and if Landlord and Tenant are not then in the process of actively negotiating the terms of a lease renewal or a new lease, the Base Rent is 125% of the previous month's Base Rent. Council's authorization of this instrument is authority for the City as Tenant to enter into the hold-over period without further council action if the Director of Capital Improvements Management Services deems the holdover beneficial.

15.02. The holdover period counts toward notice required to exercise any renewal provided for in this Lease. If the notice of renewal is less than the hold-over period, Tenant may deliver notice in the hold-over period.

15.03. Whenever this Lease refers to its term, events to occur during the term, or rights and obligations of Landlord and Tenant during the term, a hold-over period is considered a part of the term.

16. Early Termination.

Tenant may terminate this Lease at the third year or anytime thereafter by delivering 180 days prior, written notice to Landlord, and by paying a fee equal to the unamortized portions of (A) the allowance for Tenant finish-out and (B) brokerage fees paid by Landlord.

17. Default.

17.01. *Default by Landlord/Events.* Defaults by Landlord are (A) failing to provide Essential Services to Tenant within 10 days after written notice and (B) failing to comply with any other provision of this lease within 30 days after written notice

17.02. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service within 10 days after written notice, terminate this lease.

17.03. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay Rent timely, (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within 30 days after written notice with any other provision of this lease.

17.04. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the rent directly by reason of the reletting; (b) enter the Premises and perform Tenant's obligations; and (c) terminate this lease by written notice and sue for damages.

18. Quiet Enjoyment.

For so long as Tenant is not in default, Landlord promises that Tenant may peacefully and quietly have, hold, and enjoy the Premises without interference or disturbance from any person, whether claiming through Landlord or otherwise.

19. Warranty Disclaimer.

There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease.

20. Use of Common Areas.

Tenant has the nonexclusive right to use the Common Areas subject to any reasonable rules and regulations that Landlord may prescribe.

21. Abandoned Property.

Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

22. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund. If the City Council fails to appropriate funds for this Lease for the Capital Improvements Management Services Department or its assigns in the annual City of San Antonio Budget, then the City may terminate this Lease and have no further liability for the period after termination.

23. Dispute Resolution.

23.01. As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

23.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

23.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

23.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

23.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

23.06. Mediator fees must be borne equally.

23.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

24. Prohibited Interests in Contracts.

24.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

24.02. Landlord warrants and certifies as follows:

- (i) Landlord and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

24.03. Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

25. Miscellaneous.

25.01. Applicable Law. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And**

Obligations Arising Under It Are Governed by The Laws of The State Of Texas. But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

25.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

25.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

25.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

25.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion.

25.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

25.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. Notices to Tenant must include a copy to the Director of the Capital Improvements Management Services Department, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

25.08. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

25.09. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

25.10. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement

25.11. *Administrative Agreements.* All certificates, memoranda, and modifications of nonmaterial rights and obligations arising under this Lease may be signed on behalf of Tenant and delivered to Landlord by the Director of Capital Improvements Management Services, without further council action.

In Witness Whereof, the parties have caused their representatives to set their hands.

Tenant

Landlord

City of San Antonio, a Texas municipal corporation

Riverview Tower Partners, Ltd., a Texas limited partnership, by and through its sole general partner

Signature: _____

Riverview Tower GP, LLC, a Texas limited liability company

Printed Name: _____

Signature: _____

Title: _____

Printed Name: _____

Date: _____

Title: _____

Attest:

Date: _____

City Clerk

Approved as to Form:

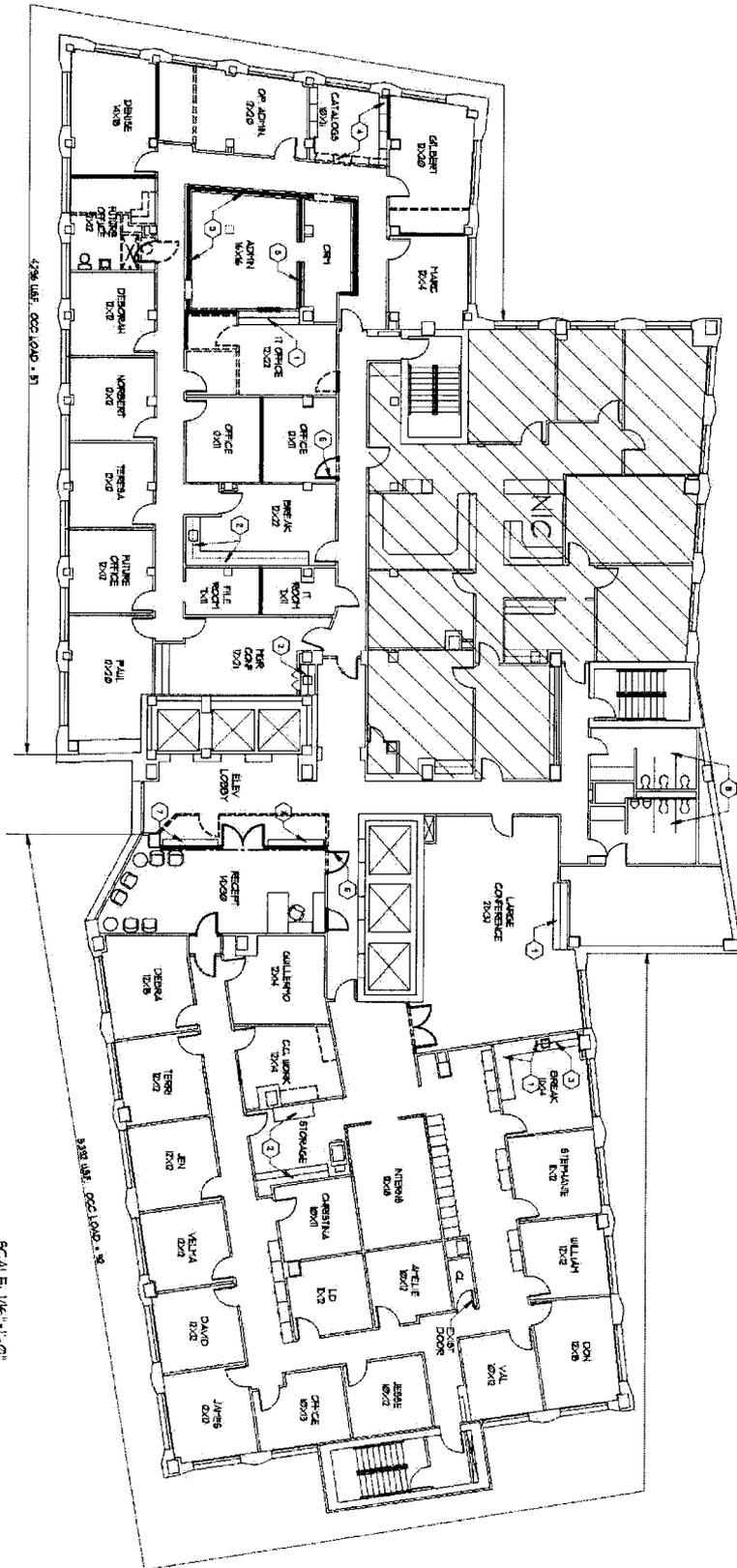
City Attorney

Exhibit A

COSA - PURCHASING & CONTRACT SERVICES

RIVERVIEW TOWER - LEVEL II
 04/21/06
 04/23/06
 04/28/06 PRICING
 04/30/06 PRICING
 05/17/06 PRICING

11241 RSF



SCALE: 1/16" = 1'-0"

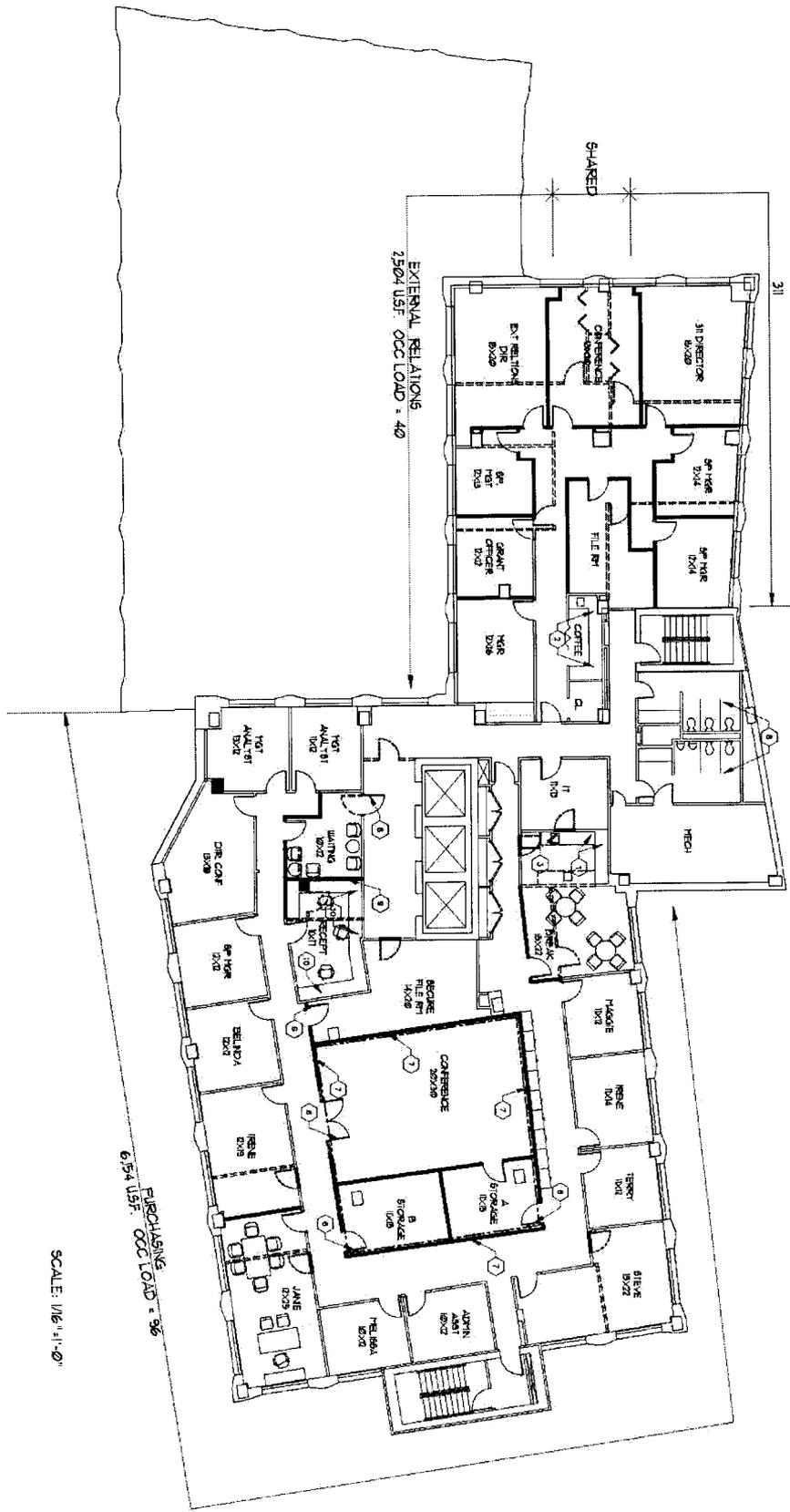
I N S I T E
 A R C H I T E C T S
 210 230 4161



1700 N. 17TH ST.
 SUITE 200
 DENVER, CO 80202
 783.8888

COSA - PURCHASING & CONTRACT SERVICES
 RIVERVIEW TOWER LEVEL 16
 04.18.08
 04.23.08
 04.28.08
 04.30.08 PRICING
 05.17.08 PRICING

3611 RSF.



SCALE: 1/16" = 1'-0"

I N S I T E
 A R C H I T E C T S
 I N C .
 210 228 4100



Exhibit B

Lease Commencement Memorandum

Landlord: Riverview Tower Partners, Ltd.

Tenant: City of San Antonio

Lease: Lease between Landlord and Tenant relating to approximately 20,852 rentable square feet (which figure may vary), Suites 1100 and 1600, in the Riverview Tower office building in San Antonio, Bexar County, Texas, the space for use by a division of Tenant's Capital Improvements Management Services Department

Authorizing Ordinance:

Predicate Facts:

Landlord and Tenant are parties to the Lease, which was authorized by the Authorizing Ordinance.

The Lease calls for the Lease Term to begin on issuance of a certificate of occupancy for the Premises.

For their mutual benefit, the parties now wish to memorialize the actual commencement date of the Lease's Term.

Rights and Obligations:

Now therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Defined Terms.

All terms used in this memorandum and not otherwise defined herein but defined in the Lease have the meanings ascribed to them in that instrument.

2. Lease Commencement.

The Lease Term commences ??? date ???. The first installment of Base Rent is due ?????.

3. Description.

A description of the Premises is attached as Exhibit A and incorporated by reference for all purposes into this instrument.

4. Rentable Square Feet.

Whenever the Lease calls for a calculation based on the rentable square feet subject to the Lease, the figure to use is 20,852.

5. No Default.

As a part of the inducement to Landlord to execute and deliver this consent, Assignor represents to Landlord and Assignee that:

- a. The Lease is in full force and effect according to its terms.
- b. Neither party is in default under the Lease.
- c. Neither party has any offset or claim against the other that would reduce or impair its obligations under the Lease.

6. Conflict of Terms

This instrument controls over anything to the contrary in the Lease.

The Remainder of the page is intentionally left blank.

In Witness Whereof, the parties have caused their representatives to set their hands.

Tenant

City of San Antonio, a Texas
municipal corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Landlord

Riverview Tower Partners, Ltd., a
Texas limited partnership, by and through
its sole general partner

Riverview Tower GP, LLC, a Texas
limited liability company

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Exhibit C

Work Letter

This Work Letter is entered into between Landlord and Tenant as described below in connection with the lease described below.

Landlord: Riverview Tower Partners, Ltd.

Landlord's Address: 111 Soledad, San Antonio, Texas 78205

Tenant: City of San Antonio

Tenant's Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Premises: Approximately 20,852 rentable square feet consisting of rentable space in Suites 1100 and 1600, in a structure commonly known as Riverview Tower ("Building"), at 111 Soledad, San Antonio, Texas, such Premises being further described in **Exhibit A**.

Commencement Date: No sooner than the issuance of a certificate of occupancy to the Premises after finish-out, the actual date (and the actual rentable square feet constituting the Premises) to be stated in a Lease Commencement Memorandum substantially in the form of **Exhibit B**.

Initial Term: 60 months.

Predicate Facts

Pursuant to the terms of the Lease and this Work Letter, Landlord has agreed to construct certain improvements to the Premises (as defined in the Lease);

All terms capitalized but not defined herein have the meanings ascribed to them in the Lease.

Rights and Obligations

Now, Therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. *Performance of Landlord's Work.*

(a). Subject to the other terms of this Work Letter, Landlord must create all partitions and works spaces shown on **Exhibit A** to the Lease. In addition, all other finishout details, including paint, carpeting, hardware, plumbing, doorways, and the like must conform to specifications provided by Tenant attached as Exhibit A to this letter ("Landlord's Plans") to be constructed in the Premises.

(b). Tenant may specify, among other details, (a) the location of file cabinets, special equipment and furniture, (b) the location of doors and interior windows, (c) any electrical, special air conditioning and plumbing requirements, (d) any telephone equipment requirements, and telephone outlet locations, (e) electrical outlet and switch locations, (f) room sizes and locations, (g) lighting requirements, (h) cabinet work or other millwork item requirements, (i) acoustical or special wall requirements, (j) color and material selections for finishes, (k) required data wiring and computer locations and (l) equipment specifications and locations, a confirmation of the location of entrances, stairs, escalators, elevators, service areas and floor design of the Premises.

3. *Plan Preparation.* Within a reasonable time after receiving such information, Landlord must prepare or cause to be prepared plans and specifications for Landlord's Work that are based upon the Space Plan and such information provided by Tenant ("Landlord's Plans"). Landlord's Plans must be submitted to Tenant for its approval. Tenant has 10 calendar days to either approve Landlord's Plans or to make reasonable detailed comments thereon. Tenant's failure to timely object to Landlord's Plans is Tenant's acceptance of the plans. If Tenant timely objects, Landlord must revise Landlord's Plans in accordance with Tenant's comments and resubmit them to Tenant for approval. Tenant then has 10 business days for approval. Again, Tenant's failure to timely object to Landlord's Plans is Tenant's acceptance of the plans. If Tenant timely objects, the revision process repeats.

4. *Additional Work.* If Tenant requires changes in Landlord's Work or other work or materials in the Premises in addition to or in substitution for the Landlord's Work (collectively, "Additional Work"), Tenant must deliver to Landlord for its review and approval the plans and specifications encompassing such Additional Work. All plans and specifications for the Additional Work ("Additional Plans") (together with any changes to the Final Plans for the Landlord's Work which may be required as a result of the Additional Work) will be prepared by Landlord's architect and completed at Tenant's sole cost and expense. Prior to beginning Additional Work, Landlord must submit to Tenant written cost estimates, including costs for delay and out-of-sequence work. Tenant's failure to approve the estimates within five days is Tenant's disapproval, and Landlord need not perform the Additional Work. For Tenant to be obligated to pay costs more than the estimate, Landlord must notify Tenant in writing when Landlord should reasonably foresee the overrun and give Tenant a chance to modify the required work.

5. *Payment for Additional Work.* Tenant must pay Landlord the cost of the Additional Work. When the Additional Work is approved, it becomes a part of "Landlord's Work".

The Landlord's Plans that are finally approved or deemed approved, together with the Additional Plans, if any, are referred to herein as the "Final Plans".

6. *Payment.* The Cost of Landlord's Work will be paid as follows:

(a). The Landlord's allowance of \$304,630 for both Suites 1100 and 1600, Tenant to determine the allocation between the two suites.

(b) Additional Work to be paid by Tenant (if any) must be paid, 50% prior to the commencement of Additional Work (up-front) and 50% at completion, as evidenced by a certificate of occupancy.

(c). The provisions of this Section survive the expiration or termination of the Lease.

7. *Substantial Completion.* Within three days after written notice from Landlord to Tenant that Landlord's Work is substantially completed, Landlord and Tenant, or their representatives, must inspect the Premises. If, as a result of Tenant's inspection of the Premises, Tenant discovers deficiencies in Landlord's Work or deviations from the Final Plans, Tenant must deliver a list of such deficiencies and deviations ("punch list") to Landlord within three days. Tenant's failure to timely deliver a punch list is Tenant's acceptance of the work. If a punch list is delivered, that does not postpone the Lease Commencement Date. Landlord must correct or cure any punch list items within 30 days or such longer period as may be necessary, provided Landlord is proceeding with due diligence. Landlord may enter the Premises at any reasonable time to correct or cure punch list items.

8. *Early Access.* Landlord must permit Tenant and its agents, to enter the Premises before the Commencement Date to prepare the Premises for Tenant's use and occupancy, including testing and installation of Tenant's equipment. Any such entry into the Premises is under all of the terms of the Lease, except as to Rent.

9. *Counterparts.* This Work Letter may be executed in any number of counterparts and all of such counterparts are one and the same instrument.

10. *Notices.* Any notices required to be sent hereunder must be in writing and sent in the manner set forth in the Lease.

11. *Prevailing Wage.* If any Tenant money is used for any work under this Work Letter, pursuant to Chapter 2258 of the Texas Government Code and City of San Antonio Ordinance No. 71312, March 29, 1990, contractor and subcontractors doing work must pay prevailing wages to their laborers, workers, and mechanics, if any. "Prevailing Wages" are as defined by the United States Department of Labor for the purpose of the Davis-Bacon Act. Contractors and subcontractors must obtain from the City of San Antonio Public Works Department, Capital Improvements Division, Wage and Hour Office, Municipal Plaza Building, located at 114 W. Commerce all materials necessary to assure compliance.

In Witness Whereof, the parties have caused their representatives to set their hands.

Tenant

City of San Antonio, a Texas
municipal corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Landlord

Riverview Tower Partners, Ltd., a
Texas limited partnership, by and through
its sole general partner

Riverview Tower GP, LLC, a Texas
limited liability company

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Exhibit D

Cleaning and Maintenance Schedule

Daily (Monday through Friday)

Carpets Vacuumed

Composition floors dust-mopped

Desks, desk accessories and office furniture dusted. Papers and folders left on desk, not to be moved.

Wastebaskets and other trash receptacles emptied; remove trash from the building to an area designated outside of the Premises.

Chairs and wastebaskets returned to proper position.

Fingerprints removed from glass doors and partitions.

Drinking fountains cleaned, sanitized and polished.

Lavatories, toilets and toilet rooms cleaned and mopped. Toilet supplies replenished.

Malfunctioning light bulb and tube replaced, as required.

Graffiti expunged as needed but no more than two business days after Tenant has given Landlord verbal notice of the existence of graffiti.

Kitchen/lunchroom supplies replenished including paper supplies and soap.

Exclusive day porter service from ____ to _____. (This language is optional depending upon City's use and need)

Weekly

Low-reach areas such as, but not limited to, chair rungs, baseboards and insides of doorjambes dusted.

Windowsills, ledges and wood paneling and molding dusted.

Floors washed in uncarpeted office areas.

Monthly

Floors waxed in uncarpeted office areas.

High-reach areas, such as, but not limited to, door frames, tops of partitions and hanging light fixtures dusted.

Upholstered furniture vacuumed, plastic and leather furniture wiped.

Picture molding and frames dusted.

Wall vents and ceiling vents vacuumed.

Carpet professionally spot cleaned as required to remove stains.

HVAC chiller water checked for bacteria, chiller water conditioned as necessary.

Quarterly

Light fixtures cleaned and dusted, but not less frequently than Quarterly.

Wood furniture polished.

Draperies or mini-blinds cleaned as required, but not less frequently than Quarterly.

HVAC units serviced for preventative maintenance purposes, all filters changed.

Semi-Annually

Windows washed as required inside and outside but not less frequently than two times annually.

All painted wall and door surfaces washed and stains removed.

All walls treated with vinyl covering washed and stains removed.

Annually

Furniture Systems and other fabric or upholstered surfaces, including chairs, couches, walls, etc., spot cleaned, or if determined to be necessary in Tenant's sole discretion, professionally cleaned in their entirety using a water extraction process.

Bathroom and any other ceramic tile surfaces professionally cleaned using a hand scrub process. All grout and porous surfaces resealed with a professional grade sealant.

Touch-up paint all interior painted surfaces in a color and finish to match existing.

As Needed

Premises and the sidewalks, driveways, parking areas and all means of ingress and egress serving the Premises should be maintained in good repair, and in clean and safe condition at all times.

All lawns, shrubbery and foliage on the grounds of which the Premises is part should be maintained in good condition and neat in appearance. Grass and shrubbery must be replanted as needed to maintain the grounds in good appearance and condition.

Carpets to be cleaned using non-detergent, low moisture, soil encapsulation system as recommended by the carpet manufacturer. The following schedule will be maintained for carpet cleaning: (i) heavy traffic areas as needed with a minimum frequency of bi-monthly (six times per year); (ii) moderate traffic areas cleaned as needed with a minimum of once every six months (two times per year) and; (iii) clean light traffic areas a minimum of one time per year. Cleaning carpet via use of a bonnet cleaning system is not an acceptable method for cleaning carpets.

All walls repainted and wall coverings replaced throughout the Premises. The paint finish should be eggshell or semi-gloss as directed by Tenant and in a color acceptable to Tenant. In no event, subject to damage or destruction conditions as provided in the Lease, will Landlord be required to repaint or replace wall coverings more than one time in a five-year period, not counting the initial tenant improvements completed prior to Tenant's occupancy or as a condition to the renewal of the Lease.

General

Landlord must, upon request of Tenant, produce written service contracts as evidence of compliance with the terms of this Cleaning and Maintenance Schedule.



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 22
Council Meeting Date: 6/12/2008
RFCA Tracking No: R-3438

DEPARTMENT: Capital Improvements
Management Services

DEPARTMENT HEAD: Mike Frisbie

COUNCIL DISTRICT(S) IMPACTED:
Council District 1

SUBJECT:
Office Lease Related to City Annex Demolition

SUMMARY:

This ordinance authorizes the execution of a lease with Riverview Tower Partners, Ltd. for use by the Purchasing Department, Intergovernmental Relations Department and the Office of Customer Service, of approximately 20,852 square feet of space, located at 111 Soledad Street in Council District 1. Approval of the lease will be for a five-year term. The City will have two, 5-year renewal options, subject to future City Council approval, a right of 1st refusal for Suites #100 and #1120, and the right to terminate without cause after the third year subject to an early termination fee equal to the unamortized portions of the construction allowance and brokerage fees paid by Landlord. The total estimated one-time expense associated with this lease is \$285,000.00 which includes relocation, telecommunication and computer reactivation expense.

BACKGROUND INFORMATION:

In early 2009, the City Hall Annex at 506 Dolorosa Street will be demolished and redeveloped as an interim surface parking to replace the parking areas that surround City Hall. This work is part of the City's long term goal of redesigning Military Plaza at City Hall in a manner that is more appropriate for the seat of local government than the current parking use. The Annex building currently houses three departments, Purchasing, Intergovernmental Relations and Office of Customer Service.

ISSUE:

This action is consistent with the City's policy to support the space needs of departments. With the planned demolition of the City Annex Building, the three departments housed in the building need to be relocated. As there is currently not a viable City-owned facility available to move the City staff into, several private properties were explored. Riverview Tower was selected due to its location, favorable rental rates, generous finish-out allowance and savings due to the existing City

IT infrastructure. Additionally, the co-location of all three City department functions within one building will reduce lease expenses as they will share certain office facilities including conference rooms, reception areas break rooms and other common areas.

ALTERNATIVES:

The alternative to entering into this lease agreement with Riverview Tower would be to keep the departments in place at the Annex while the search for suitable space in which to relocate them continues, in the hope that a more favorable lease could be found. However, this alternative will delay the demolition of the Annex for an unknown period of time. The Riverview Towers location is also favorable since the City already houses other departments in the building. In addition, identifying one location for these three departments will provide a more fluid transition period rather than separate locations for each department.

FISCAL IMPACT:

Under the terms of the lease agreement the City will pay \$16.00 per square foot annually for years one through three (\$27,802.66 monthly) and \$17.00 per square foot annually for years four and five (\$29,540.33 monthly) with an estimated total base rent over the initial 5-year term of \$1,709,864.00. Base rent for the first five-year renewal term, if exercised, will remain at \$17.00 per square foot annually (\$29,540.33 monthly) for years one through three and \$18.00 per square foot annually (\$31,278.00) during years four and five. Base rent for the second five-year renewal term, if exercised, will be at the then prevailing market rental rate. Annual rental rates and rent for each lease year is provided in the table below:

Lease Years	Annual Rental Rate	Monthly Rent	Annual Rent
1-3	\$16.00 S.F.	\$27,802.66	\$333,632.00
4-5	\$17.00 S.F.	\$29,540.33	\$354,484.00
1st Renewal Term			
1-3	\$17.00 S.F.	\$29,540.33	\$354,484.00
4-5	\$18.00 S.F.	\$31,278.00	\$375,336.00
2nd Renewal Term			
1-5	Market Rate TBD	Market Rate TBD	Market Rate TBD

In addition, the City will be responsible for the payment of its pro-rata share of operating expenses (maintenance, insurance charges, janitorial charges, utilities and taxes) over and above the base-year operating expenses during the lease term. The Landlord will provide twelve parking spaces in the adjacent Rand Parking Garage for \$77.00 per space monthly (\$11,088.00 annually).

The total estimated one-time expense associated with this lease is \$285,000.00 which includes; relocation, telecommunication and computer reactivation expenses (because other city offices are located in the building, the City's fiber network is already connected to the property, thereby reducing relocation expenses), new furniture and network equipment. These one-time expenses are not currently budgeted, however it is anticipated that these expenses will be funded by non-departmental funds.

The Purchasing Department, Intergovernmental Relations Department and the Office of Customer Service will budget for the reoccurring expenses (rent and parking) in the FY 2009 budget.

RECOMMENDATION:

Staff recommends approval of this Ordinance authorizing the lease of office space at Riverview Tower for the total estimated expenditure of \$1,709,864.00 over the initial 5-year term.

The Discretionary Contracts Disclosure Form is attached.

ATTACHMENT(S):

File Description	File Name
Riverview Lease & Discretionary Form	Riverview Lease & Discretionary Form.pdf
Annex to Riverview Lease - Fiscal Impact Sheet	Annex - Riverview Lease - Fiscal Impact Sheet.xls
Voting Results	
Ordinance/Supplemental Documents	200806120528.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Mike Frisbie Director Capital Improvements Management Services

APPROVED FOR COUNCIL CONSIDERATION:

Penny Postoak Ferguson Assistant City Manager